

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELVIN ANTHONY HERNANDEZ,	:	
	:	
Petitioner,	:	CIVIL ACTION NO. 19-508
	:	
v.	:	
	:	
BARRY SMITH, THE DISTRICT	:	
ATTORNEY OF THE COUNTY OF	:	
LEHIGH, and THE ATTORNEY	:	
GENERAL OF THE STATE OF	:	
PENNSYLVANIA,	:	
	:	
Respondents.	:	

**ORDER**

**AND NOW**, this 8th day of October, 2019, after considering the petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by the *pro se* petitioner, Melvin Anthony Hernandez (Doc. No. 1), the response in opposition to the petition filed by the respondents (Doc. No. 7), and United States Magistrate Judge Linda K. Caracappa's report and recommendation (Doc. No. 8); accordingly, it is hereby **ORDERED** as follows:

1. The clerk of court is **DIRECTED** to **REMOVE** this action from civil suspense and **RETURN** it to the court's active docket;
2. The Honorable Linda K. Caracappa's report and recommendation (Doc. No. 8) is **APPROVED** and **ADOPTED**;<sup>1</sup>

---

<sup>1</sup> Since neither party filed objections to Chief Magistrate Judge Caracappa's report and recommendation (with said objections having been due by September 16, 2019), the court need not review the report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). Nonetheless, "the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report." *Id.* As such, the court will review the report for plain error. *See Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) ("In the absence of a timely objection, . . . this Court will review [the magistrate judge's] Report and Recommendation for clear error." (internal quotation marks omitted)). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court has reviewed Chief Magistrate Judge Caracappa's report for plain error and has found none.

3. The petitioner's petition for a writ of habeas corpus (Doc. No. 1) is **DISMISSED**;
4. The petitioner has not made a substantial showing of the denial of a constitutional right and is therefore not entitled to a certificate of appealability, 28 U.S.C. § 2253(c)(2); and
5. The clerk of court shall mark this case as **CLOSED**.

BY THE COURT:

/s/ Edward G. Smith  
EDWARD G. SMITH, J.